

August 2006

Green Facts

Freedom of Information & Protection of Privacy

All Staff of the Ministry of the Environment (MOE) and its affiliated agencies are subject to the provisions of the *Freedom of Information and Protection of Privacy Act* (FIPPA). This is a very brief summary of the requirements found in the legislation. For additional information, please contact the Freedom of Information and Protection of Privacy Office of the Ministry at (416) 314-4075.

Purpose of the Act

- To provide the public the right of access to government-held information;
- To provide an individual the right of access to his/her own personal information;
- To impose a duty on government employees to protect individual privacy.

Scope of the Act

Any record of information, regardless of how it was recorded, such as paper, computer, e-mail, personal log books, microfilm, photograph, and video is subject to FIPPA;

Where part of the record falls within one of the exemptions (see below), but other information in the record can be disclosed, as much of the record as possible must be disclosed.

Who is covered by the Act?

Ministries (MOE), agencies, boards, commissions, universities, community colleges, municipalities and their boards;

Information submitted by a third party such as a private citizen, a corporation, another government or their departments.

Timelines

Once a request for information is received by the ministry, we have 30 days in which to provide a written response outlining whether or not access, or partial access, to the record(s) will be given. If access is given, the record(s) will be included as part of the written notice to the requestor; In certain circumstances (e.g. large number of records or external consultations), the ministry may extend the 30 day time limit for a period of time that is reasonable under the circumstances. This extension may be subject to review by the Information and Privacy Commissioner.

Limitations on access

FIPPA provides a number of limitations on access. There are two types of exemptions from the rights of access under the legislation: mandatory and discretionary exemptions.

Mandatory

Mandatory exemptions pose an obligation to refuse to disclose a record. There are three mandatory exemptions:

- S12-cabinet records -- any record that went to, or is going to, or received from Cabinet;
- S17-third party information -- corporate confidential - see Three Part Test below;

- S21-personal information - such as complainant's identity, home address, educational or employment history, personal views of a private citizen who contacted the Ministry, etc.

Discretionary

Other exemptions are discretionary; which means the Ministry is permitted to disclose the record despite the existence of an exemption. Dealing with a discretionary exemption involves a two stage process. The first step is to determine whether the record or part of the record falls within an exemption and the second step is to decide whether the Ministry is willing to release the record despite the existence of the exemption (FIPPA Coordinator, as Head, to make this decision).

There are nine discretionary exemptions:

- S13-advice to government--recommendation by one staff person to another which will ultimately be accepted or rejected (e.g. Recommended options for policy direction);
- S14-law enforcement--Investigations and Enforcement Branch activities or abatement matters which may lead to prosecution (once the matter is closed, we release except for personal information such as identity of complainant). For example, the Commissioner's Office agreed that the Operations Division Delivery Strategies document was exempt in its entirety as it revealed investigative techniques;
- S15-relations with other governments--negative impact on relations with other provincial, federal or international governments;
- S16-defence of Canada--jeopardize security of Canada;
- S18-economic and other interest of Ontario--the Ministry's proprietary information;
- S19-solicitor-client privilege--records that reveal the request for or receipt of legal advice or in contemplation of litigation (communications with Legal Services Branch except of a factual nature like the Court date is next month);
- S20-danger to safety or health--of an individual, if the record is disclosed (where

there have been disturbances or some expectation of same);

- S22-information already or soon to be published (land registry documents/newspaper clippings);
- S49-limitations to disclosing the requester's own personal information (usually relates to investigation of the individual until the matter is closed).

Information & Privacy Commissioner's Three Part Test

For the Ministry of the Environment, one of the most commonly used exemptions is section 17 (third party confidential records). Information supplied by a third party can be exempted if it satisfies all three parts of the Information and Privacy Commissioner's test.

The test is as follows:

- the record must reveal a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
- the record must have been supplied to the Ministry in confidence; **and**
- disclosure of the information must give rise to a reasonable expectation of harm, such as:
 - a) significantly prejudice the third party's competitive position; **or**
 - b) information would no longer be supplied to the Ministry where it is in the public interest to continue to be supplied; **or**
 - c) result in an undue loss or gain to any person or organization. For example, the Commissioner has ruled that a hydrogeological survey that cost \$5,000 to \$9,000 satisfied part 1 and part 2 of this test, but failed on the harms portion or part 3 of the test.

Obligation to disclose

The FIPPA Act requires that the Ministry shall disclose any record to the public or persons affected if there are reasonable and probable grounds to believe that it is in the public interest to do so and the record reveals a **grave environmental, health or safety hazard to the public.**

In addition, the Ministry is not to refuse to disclose a record that contains the results of product or environmental testing carried out by or for the Ministry.

Frivolous or vexatious

In very select circumstances, the Ministry may decide not to process a request because the requester is abusing the system. The Minister of the Environment, as Head, is responsible for deciding whether to refuse to process a request on such a basis.

Privacy protection

Definition of personal information:

Personal information is any recorded information about an identifiable individual, including:

- address;
- telephone number;
- personal opinions or views of the individual;
- correspondence sent to the ministry that is of a private or confidential nature, and replies to that correspondence;
- the individual's name where it appears with other personal information such as FIPPA requester, EBR review or investigation applicant, complainant.

Principles of privacy protection:

Privacy protection principles contained in the Act are:

- ministry staff shall only collect and use the personal information needed to operate its programs;
- personal information shall be collected directly from the individual concerned;
- the individual must be informed of the purpose for which the personal information is being collected and used;
- those who collect personal information must take whatever precautions are necessary to ensure it is accurate and up-to-date;
- personal information must be retained long enough to give the individual time to access it and check it for accuracy (one year).

As a result, no employee shall disclose personal information except: with the consent of the individual for a purpose consistent with the initial collection; in compelling circumstances affecting

health or safety; where it is part of a public record; where other legislation authorizes disclosure.

Appeal provisions

In general, any decision that is made under the Act may be appealed to the Information and Privacy Commissioner. Complaints of invasions of privacy are also investigated by the Commissioner's Office.

There is no right of appeal of an Order made by the Commissioner. A judicial review proceeding may be brought before the Ontario Court, General Division where it is alleged that the Commissioner has made a serious procedural error, has acted on inadmissible evidence or has exceeded her jurisdiction.

Chargeable fees

- \$5.00, NONREFUNDABLE APPLICATION FEE
- SEARCH TIME - \$30/hr (no free time) - to locate the records if a whole file is requested or a specific document in a file, if that is the nature of the request
- PREPARATION TIME - \$30/hr (examples: remove binding; taking a complainant's name off an occurrence report, taking out process flow information or production rates from a certificate of approval application.
- PHOTOCOPYING @ 20 cents per page (includes time/labor)
- INVOICED EXPENSES @ cost (photographs, blue prints)
- DELIVERY @ cost (Purolator)

Please note: The time to read, discuss, straighten out the file, or decide whether to give out the document(s) in the file is not chargeable and is not included in the fee estimate.

For more information

For more information please contact:

**Freedom of Information &
Protection of Privacy Office**

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Access and Privacy Office

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